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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

In Re:	)	Case. No. BK-N-10-51372-GWZ
	)	
ROGER PIERRE BAYLOCQ,	)	
	)	Chapter 11
	)	
Debtor.	)	DATE: September 13, 2011
	)	TIME: 2:00 PM

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UNITED STATES' OBJECTION TO CONFIRMATION OF  
ROGER PIERRE BAYLOCQ'S MAY 31, 2011 PLAN OF REORGANIZATION

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THE UNITED STATES OF AMERICA, on behalf of its agency, the  
Internal Revenue Service (the Service), hereby objects to  
confirmation of ROGER PIERRE BAYLOCQ'S MAY 31, 2011 PLAN OF  
REORGANIZATION (plan). This objection is supported by the  
following points and authorities.

1        1.    The Service has filed a proof of claim asserting  
2 secured tax claims of \$159,426.96 and unsecured priority tax  
3 claims of \$403,386.05 (Claim 14-1). The unsecured priority tax  
4 claims for tax years 2007, 2008, and 2009 were estimated due to  
5 the failure to file returns. The returns have now been filed,  
6 but are under examination. The Service's proof of claim has not  
7 yet been amended to reflect either the amounts reported by the  
8 debtor or any additional amounts determined by the Service.

9        2.    The plan fails to comply with the requirements of 11  
10 U.S.C. § 1129(a)(1) in that it does not comply with other  
11 provisions of the Bankruptcy Code. It violates other provisions  
12 of the Bankruptcy Code in the following respects:

- 13        • The plan does not provide a class for the Service's secured  
14 tax claims. This violates the plan content requirements of  
15 11 U.S.C. § 1123(a). The plan includes the Service's  
16 secured tax claims in the same paragraph that provides for  
17 the Service's unsecured priority tax claims (plan at pp. 16-  
18 17). The secured tax claims are a separate class of claims.

- 19        • The plan provides that:

20            Unless a taxing authority has filed a Claim against the  
21 Debtor within the bar date established therefor, no  
22 claim of such authority will be allowed against the  
23 Debtor on account of Claims against the Debtor, or for  
24 taxes, liabilities, interest, additions to tax or other  
25 charges arising out of the failure, if any, of the  
26 Debtor, an affiliate, or any other entity to have paid  
tax or to have filed any tax return (including, but not  
limited to, an income tax return or franchise tax  
return) in or for any prior year or arising out of an  
audit of any return for a period before the Petition  
Date.

1 (plan at p. 28) The meaning of this provision is not clear.

2 But, it seems to be an attempt to expand the discharge  
3 beyond the discharge provided for by 11 U.S.C. § 1141(d).  
4 Under 11 U.S.C. § 1141(d)(2), the debtor cannot receive a  
5 discharge for any debtor excepted from discharge under 11  
6 U.S.C. § 523. Under 11 U.S.C. § 523, certain taxes are  
7 excepted from discharge "whether or not a claim for such tax  
8 was filed or allowed." 11 U.S.C. § 523(a)(1)(A).

- 9 • The plan also provides that:

10       Amendments to Claims after the Confirmation Date are  
11       barred upon entry of the Confirmation Order.

12 (plan at p. 29) This appears to be an attempt to fix  
13 allowed claims by the terms of a plan rather than through  
14 the claim determination process. The proper method for  
15 determining the allowed amounts of claims is through the  
16 objection to claim process, not through a provision in a  
17 plan. 11 U.S.C. § 502(a); *In re Barbier*, 77 B.R. 799, 799-  
18 800 (Bankr. D. Nev. 1987), *rev'd on other grounds, United*  
19 *States v. Barbier*, 896 F.2d 377 (9th Cir. 1990).

- 20 • The plan also provides for an injunction from and after the  
21 Effective Date (plan at pp. 32-33). The terms of this  
22 postconfirmation injunction are inconsistent with the  
23 provisions of 11 U.S.C. § 1141 concerning the effect of  
24 confirmation. Moreover, such injunctions even if allowable  
25 with respect to other creditors are barred with respect to  
26 Service by the Anti-Injunction Act. *American Bicycle Ass'n*

1        *v. United States (In re American Bicycle Ass'n)*, 895 F.2d  
2        1277 (9th Cir. Ariz. 1990).

- 3        • The plan also provides for revesting of assets in the debtor  
4        free and clear of all claims and interests of creditors  
5        (plan at p. 36). This provision is contrary to 11 U.S.C. §  
6        1141(c), which expressly provides an exception for debts  
7        excepted from discharge under 11 U.S.C. § 1141(d)(2).

8        3. The plan fails to comply with the requirements of 11  
9        U.S.C. § 1129(a)(9)(C) concerning unsecured priority tax claims  
10       in the following respects:

- 11       • The period of deferred payments under the plan exceeds the  
12       period allowed by statute. The plan provides for payments  
13       over 60 months beginning on the effective date (plan at pp.  
14       16-17). The statute requires that the period not exceed "5  
15       years after the date of the order for relief." 11 U.S.C. §  
16       1129(a)(9)(C)(ii). In this case, the order for relief  
17       occurred on the petition date, April 15, 2010. 11 U.S.C. §  
18       301(b). Thus, less than four years remains for deferred  
19       payment of the unsecured priority tax claims.

20       4. The plan fails to comply with the requirements of 11  
21       U.S.C. § 1129(a)(9)(D) concerning secured tax claims in the  
22       following respects:

- 23       • The period of deferred payments under the plan exceeds the  
24       period allowed by statute. The plan provides for payments  
25       over 60 months beginning on the effective date (plan at pp.  
26       16-17). The statute requires that secured tax claims be

1        paid over the same period as the unsecured priority tax  
2        claims. 11 U.S.C. § 1129(a)(9)(D). Thus, less than four  
3        years remains for deferred payment of the secured tax  
4        claims.

5        5. The plan fails to comply with the requirements of 11  
6        U.S.C. § 1129(a)(11) in that it is not feasible—the proposed  
7        payments are inadequate to meet the required treatment of claims.

8        6. The plan fails to comply with the requirements of 11  
9        U.S.C. § 1129(a)(15) in that the debtor has not committed all his  
10       disposable income over the initial 5-year period of payments  
11       under the plan. After the BAPCPA amendments, an individual  
12       chapter 11 debtor must either pay all unsecured claims in full,  
13       or devote all his disposable income over the next 5 years to  
14       unsecured creditors. 11 U.S.C. § 1129(a)(15). This requirement  
15       is further supported by 11 U.S.C. § 1115 (classifying all  
16       postpetition earnings and after-acquired property as a property  
17       of the bankruptcy estate until "...the case is closed, dismissed or  
18       converted...") and 11 U.S.C. § 1123(a)(8) (requiring an individual  
19       chapter 11 debtor to fund the plan with "all or such portion of  
20       earnings from personal services ... or other future income of the  
21       debtor as is necessary for the execution of the plan").

1 WHEREFORE, the United States requests that the court deny  
2 confirmation of ROGER PIERRE BAYLOCQ'S MAY 31, 2011 PLAN OF  
3 REORGANIZATION.

4 DANIEL G. BOGDEN  
5 United States Attorney

6 Date: August 24, 2011 By: /s/ Rollin G. Thorley  
7 ROLLIN G. THORLEY  
8 Special Assistant  
9 United States Attorney  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following parties are listed as Filing Users who will receive notice of the foregoing document by electronic transmission of a Notice of Filing. If the following parties are not listed on a Notice of Electronic Filing, a separate certificate will be filed indicating the form of service on such parties:

JOHN WHITE, Counsel for the debtor  
OFFICE OF THE UNITED STATES TRUSTEE

Dated: August 24, 2011

/s/ Rollin Thorley